

In Re: Moe's Southwest Grill)
 Personal Property Account No. P-183567 T-A) Shelby County
 Tax year 2005)

The subject property is presently valued for tax purposes as follows:

Appraisal	Assessment
\$161,200	\$48,360

On November 28, 2006, an appeal was filed on the taxpayer's behalf with the State Board of Equalization ("State Board") by Mandy Braswell, CPA, of McCranie & Burns, LLP (Gainesville, GA).

The undersigned administrative judge conducted a hearing of this matter on April 18, 2007 in Memphis. The taxpayer was represented by Ray Orgera.¹ Legal advisor John Zelinka, Esq., audit manager Eric Beaupre, CPA, and Samantha Smith appeared on behalf of the Shelby County Assessor of Property ("Assessor"). The Assessor's representatives moved to dismiss the appeal on the ground that it was untimely.

Background. In February, 2004, Ray and Elizabeth Orgera opened a Moe's Southwest Grill on North Germantown Parkway in Cordova. McCranie & Burns timely filed a tangible personal property schedule for this restaurant with the Assessor's office in tax year 2005. Based on the information reported, the Assessor valued the subject property at \$85,200.

Apparently unbeknownst to Mr. Orgera, McCranie & Burns amended the taxpayer's previously filed (2005) schedule in April, 2006. After reviewing the accompanying fixed asset listing, the Assessor *increased* the valuation of the subject property to the amount shown above.² Notice of this change of assessment was sent to the taxpayer's local mailing address (1152 Reid Hooker Road, Eads, TN 37028) on September 11, 2006. This notice informed the taxpayer of its right of its right of appeal to the State Board "within forty five (45) days after notice is sent."

¹The NOTICE OF HEARING was directed to Ms. Braswell. However, in a letter dated March 9, 2006, she informed the State Board that her firm would not be representing the taxpayer in this case.

²The adjusted assessment was ascribed to the correction of an unspecified “error” within the meaning of Tenn. Code Ann. section 67-5-509. The record indicates that the Assessor added the value attributable to the leasehold improvements detailed in the fixed asset listing.

When Mr. Orgera received the assessment change notice, he promptly referred the matter to McCranie & Burns. Unfortunately, it was not until late November that Ms. Braswell mailed a completed appeal form to the State Board. In a follow-up letter of December 7, 2006, she explained that:

Our appeal was submitted past the due date due to lack of supporting documentation....

We contacted Shelby County Assessor's office several times regarding this matter in July and August....We thought the matter had been resolved and then we were notified it was still open. We did not have the proper documentation to state our case and needed more time to gather the information.

Although it is past the deadline for appeal we have been working on resolving the issue for several months. We did not have sufficient information to appeal this matter by the deadline.

Stipulation. At the hearing, the parties agreed that the market value of the tangible personal property used (or held for use) in the appellant's business on January 1, 2005 was \$122,200.

Issue. The only issue is whether the State Board has the requisite jurisdiction to adopt the stipulated value.

Applicable Law. Tenn. Code Ann. section 67-5-1412(e) provides (in relevant part) that:

If notice of an assessment or classification change pursuant to section 67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board **at any time within forty-five (45) days after the notice was sent**....The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer **up to March 1 of the year subsequent to the year in which the assessment was made.** [Emphasis added.]

Analysis. Regrettably, the filing of this appeal was delayed on the mistaken assumption of the taxpayer's agent that all "supporting documentation" had to be included in the original submission. While State Board Rule 0600-1-.08(1) does preclude the **hearing** of an appeal "unless the appropriate appeal form appears to have been fully completed in good faith," the State Board has historically deemed an appeal to be "filed" (for purposes of meeting a statutory deadline) in spite of a technical defect or omission on the appeal form. This agency has also liberally permitted taxpayers to amend and/or supplement information provided on the appeal form.

Like other administrative agencies, the State Board has only such powers and duties as are delegated to it by the legislature. To whatever extent, then, a taxpayer's right of appeal to the State Board is conditioned on compliance with deadlines or other statutory requirements, this agency must abide by such limitations. Accordingly, the Tennessee Attorney General has opined that:

...[T]he time deadline for filing an appeal...is a jurisdictional prerequisite which cannot be waived by the consent of the parties.

Tenn. Atty. Gen. Op. 92-62, p. 10.

Arguably, though it pertains to the assessment of the subject property for tax year 2005, this appeal could be considered under the "reasonable cause" provision of Tenn. Code Ann. section 67-5-1412(e) because the disputed assessment was actually made in 2006. But the Assessment Appeals Commission has proclaimed that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the "reasonable cause" provisions to waive these requirements except where the failure to meet them is due to **illness or other circumstance beyond the taxpayer's control**...[Emphasis added.]

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), pp. 2—3.

Even if the Assessor's office did somehow mislead Ms. Braswell agent to believe that "the matter had been resolved," the undisputed fact remains that the taxpayer was duly notified of the increased assessment and properly apprised of its administrative remedy. Nothing in the record suggests that any "circumstance beyond the taxpayer's control" prevented the timely exercise of its right of direct appeal to the State Board. Hence the administrative judge is compelled to grant the Assessor's motion.

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

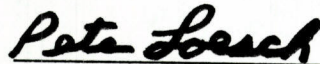
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "**must be filed within thirty (30) days from the date the initial decision is sent.**" Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the

appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8th day of May, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Ray Orgera, Moe's Southwest Grill
Tameaka Stanton-Riley, Mgr. Appeals Department, Shelby County Assessor's Office

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